

INDIAN PALMS COUNTRY CLUB ASSOCIATION



*The Coachella Valley's Community
Management Company*

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EFFECTIVE IMMEDIATELY

TO: Members of Indian Palms Country Club Association (IPCCA)
RE: COVID-19 Closure of Shared Facilities

Dear Members:

The Board of the Indian Palms Country Club Association ("Association"), after consultation with legal counsel, has decided to close the following shared facilities effective immediately:

- Lifestyle Center Gym, Pool/Spa, Restrooms, and Courts (tennis, pickleball and bocce)
- Satellite Pools/Spa and Restrooms at Delano/Quinn & Cochran/Truman

This was not an easy decision. But, after hearing from the Association's attorney regarding potential liability issues and considering the special assessments and regular assessment ("dues") increases that might be needed, both to address possible lawsuits and to cover the costs associated with the State's extensive guidelines, the Board decided that the risk of keeping these shared facilities open was not outweighed by the benefit of the facilities remaining open. The primary factor driving this decision was insurance coverage. The Association's insurance agent reported that the Association's insurance policies contain exclusions from coverage for virus-related claims. This was most worrisome from a defense point of view, as opposed to ultimate liability concerns. If the Association were to be sued for a virus-related claim, the Board anticipates it would be difficult for the plaintiff to establish liability. But, notably, with no insurance coverage, the Association would be required to pay, out-of-pocket, for a law firm to defend the Association. The cost to defend a simple slip and fall lawsuit can exceed \$50,000.00. The cost to defend a wrongful death COVID-19 claim could exceed that by a factor of five or more. It is this "cost-to-defend" burden that gave the Board the most pause.

The Board considered whether liability waivers might provide protection, and does plan to utilize these in the future for whatever benefits they can provide for users of certain venues. However, such waivers do not stop individuals from suing. Instead, the waiver provides a defense; if the court upholds the waiver (liability waivers are not always upheld). Even with a liability waiver, in the absence of insurance coverage, the Association still faces dues increases and special assessments to raise funds to defend any claim that might be made. Further, the potential plaintiffs include not just people who use the shared facilities and sign a waiver, but their neighbors, friends and family who did not sign a waiver but could potentially still pursue a claim against the Association.

There was also a discussion about the burden of complying with the State guidelines. As was broadly reported in the press, on June 5, 2020, the State issued guidance suggesting that some swimming pools and other shared facilities could be reopened, where permitted by the County in which the shared facilities are located. What did not receive the same broad press coverage were the safety measures called for by that guidance.

Those measures include:

- Adopting a site-specific COVID-19 prevention plan;
- Designating a trained person(s) to implement that plan;
- Implementation of a reservation system, if possible;
- Use of an on-site temperature and/or symptom screening method for patrons;
- Making face coverings available to patrons who arrive without one;
- Implementing measures to ensure social distancing requirements are satisfied;
- Adopting a schedule for regular and thorough cleaning and disinfecting throughout the day; and
- Equipping entrances and exits with hand sanitizer and sanitizing wipes.

While Riverside County has, at least so far, permitted pools to reopen (shared indoor facilities such as the Lifestyle Center have again been ordered closed), if the guidelines are followed, adopting and implementing these measures would require on-site monitors (possibly security guards) and increased janitorial services. That would constitute an unbudgeted expense that might require a temporary dues increase. That, in and of itself, was something the Board was willing to consider, but that unbudgeted expense, coupled with the potential negative consequences stemming from the lack of insurance coverage for virus-related claims, led the Board to decide to close the shared facilities named above.

The Board will closely monitor State and County guidance and confer with the Association's insurance agent regarding potential endorsements to remove the exclusion against virus-related claims. However, the Board is not optimistic that any insurance carrier would be willing to remove a virus exclusion while the pandemic conditions continue. Thus, while the state of emergency continues, the Board cannot say when the shared facilities mentioned may be able to be reopened.

Thank you for your anticipated understanding.

Board of Directors
Indian Palms Country Club Association